

REMARKS

Applicant respectfully request reconsideration of this application. Claims 1-33 are pending.

In response to the Office Action mailed May 14, 2008, Applicant respectfully request reconsideration of the requirement for restriction.

Provisional Election

Applicant indicates a provisional election of a single species from each column (A-D) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable and corresponding claims to be examined for the referenced application in the event the requirement becomes final:

From column A: Applicant provisionally elects species A₃ corresponding to Figure 10. Applicant provisionally elects Claims 21-22 and 32-33 to be examined for species A₃ in the event the requirement becomes final.

Applicant also respectfully submits that the Examiner is in error for stating that no claims are generic, because the optical signaling system as claimed in Claims 23 and 32, as well as the optical transmitter as claimed in Claim 9 and the optical receiver as claimed in Claims 18 and 21 are generic with regard to column A.

From column B: Applicant provisionally elects species B₄ corresponding to Figure 6b. Applicant provisionally elects Claims 12 and 26 to be examined for species B₄ in the event the requirement becomes final.

From column C: Applicant provisionally elects species C₂ corresponding to Figure 4b. Applicant provisionally elects Claims 10-13 and 24 to be examined for species C₂ in the event the requirement becomes final.

Applicant also respectfully submits that the Examiner is in error for stating that no claims are generic, because the optical signaling system as claimed in Claim 24, as

well as the optical transmitter as claimed in Claim 10 are generic with regard to column C.

From column D: Applicant provisionally elects species D₁ corresponding to Figure 10. Applicant provisionally elects Claims 1-8 to be examined for species D₁ in the event the requirement becomes final.

Traversal

Applicant respectfully submits that the MPEP sets forth that (emphasis added) there are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent or distinct *as claimed*; and
- (B) There would be a serious burden on the examiner if restriction is not required.

The Examiner has restricted the drawings (which illustrate examples not limitations of alternative embodiments of the claimed subject matter) rather than the claims of the present application and requires Applicant to elect a subset of drawings for prosecution on the merits. The Examiner is in error for failing to indicate which inventions *as claimed* (i.e. as set forth by the claims) are independent or distinct.

Applicant also respectfully submits that a plurality of species may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form 37 CFR §1.141. The examiner alleges that no claims are generic, but according to that reasoning the independent claims must already be limited to particular species.

Applicant also respectfully requests the Examiner indicate whether an assertion is being made that some claimed inventions of the present application are independent or that they are distinct, and also to explain his reasoning that the cited figures of each column illustrate “mutually exclusive characteristics.”

The MPEP defines the term "independent" (i.e., unrelated) as meaning that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect (MPEP §802.01, I).

Applicant respectfully has submitted (in the Response filed June 25, 2007) that the Examiner was in error for asserting that the claimed inventions are unrelated and that they are not disclosed as capable of being used together. Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect. Examples of related inventions include combination and part (subcombination) thereof.

Applicant respectfully pointed out that related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art) (MPEP §802.01, II).

The Examiner agreed that the prior restriction made February 28, 2007 was not proper. Therefore, Applicant respectfully requests the Examiner to explain where from the cited illustrations in each of columns A, B, C and D, at least one illustration is patentable (novel and nonobvious) over another; or alternatively to withdraw the present restriction requirement as being improper.

CONCLUSION

Applicants respectfully submit the present claims for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Lawrence M. Mennemeier at (408) 765-2194.

Authorization is hereby given to charge our Deposit Account No. 50-0221 for any charges that may be due.

Respectfully submitted,

Date: September 15, 2008 _____ /Lawrence M. Mennemeier/ _____
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